



U.S. COMMODITY FUTURES TRADING COMMISSION

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ERIC T. DIXON,)
)
Complainant)
v.) CFTC Docket
) No. 99-R070
KERRY LANSING BREWER, FUTURES)
TRADING GROUP, INC., PATRICK)
WESLEY TCHOU, and VISION)
LIMITED PARTNERSHIP,)
Respondents)
)

ORDER OF DISMISSAL FOR CAUSE

Complainant Dixon has sent this Office a copy of a letter to counsel for respondents in which he says he wishes to withdraw his case because he is unable to devote the resources necessary to prosecute the matter. The letter specifically references his assumption that the letter of withdrawal should be enough to terminate the case.

Dixon's decision to withdraw the complaint follows respondents' motion to compel discovery, in which respondents' counsel averred, among other things, that Dixon had failed to return telephone calls to discuss the discovery issue. Contacted by the undersigned last week, Dixon was informed that he would be ordered to produce discovery, and to pay respondents' fees for seeking the order compelling discovery (Rule 12.30(c)), unless he arranged for a conference call with respondents' attorney and the undersigned in which he demonstrated why the order should not be granted. Dixon did not know whether he had received any discovery requests from respondents, and claimed not to have received the motion to compel. He did not, however, have the file at his office, despite the fact that he has provided only his office telephone number at which to be contacted. Instead of arranging for the call, however, Dixon sent respondents' counsel the above-described letter withdrawing the complaint.

Complainant Dixon is an attorney employed by a firm with a strong reputation for work in the commodity futures industry. There is no provision for unilateral withdrawal of the complaint. Respondents' attorney has indicated to the undersigned in a telephonic inquiry that he will not be stipulating to the withdrawal as provided in Rule 12.21 and takes no position on what action should be taken.

Under the circumstances, where Dixon has failed to respond to discovery, where Dixon has failed to comply with instructions to arrange for resolution of the discovery dispute, and where Dixon has chosen to withdraw rather than provide evidence or subject himself to sanctions for noncompliance, the case cannot go forward. In the absence of a complainant willing to prosecute his own allegations, respondents--who are entitled to defend themselves but cannot if the complainant refuses to produce evidence--should not be required to face successive lawsuits on the same events. Accordingly, the complaint is DISMISSED WITH PREJUDICE.

June 29, 1999


JOEL R. MAILLIE
Judgment Officer